

# **MINUTES OF THE OPEN SESSION OF THE RHODE ISLAND ETHICS COMMISSION**

**May 2, 2006**

**The Rhode Island Ethics Commission held its 9th meeting of 2006 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, May 2, 2006, pursuant to the notice published at the Commission Headquarters and at the State House Library.**

**The following Commissioners were present:**

**James Lynch, Sr., Chair   Richard E. Kirby\***

**Barbara Binder, Vice Chair   James V. Murray**

**George E. Weavill, Jr., Secretary   James C. Segovis**

**Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Jason Gramitt, Staff Attorney/Education Coordinator; Staff Attorneys Dianne Leyden and Macall Robertson; and, Commission Investigators Peter J. Mancini and Michael Douglas.**

**At approximately 9:19 a.m., the Chair opened the meeting.**

**The first order of business was to approve the minutes of the Open**

**Session held on April 18, 2006. Upon motion made by Commissioner Binder, duly seconded by Commissioner Segovis, it was**

**VOTED: To approve the minutes of the Open Session held on April 18, 2006.**

**AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Jr., Richard E. Kirby, James V. Murray, and James C. Segovis.**

**The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date.**

**The first advisory opinion was that of Scott K. Nelson, a member of the Coventry Planning Commission. The petitioner was present with Attorney John A. Pagliarini, Jr. Staff Attorney Robertson presented the Commission Staff recommendation. Attorney Pagliarini informed that he drafted a proposed definition of “direct competition” as an addition to the staff recommendation. Staff Attorney Robertson provided a copy of the definition to the Commission. Attorney Pagliarini informed that the petitioner is one of nine members of the Planning Commission and that a majority of five members is required to rule. He remarked that competitor is a broad term and that there is**

a difference between a direct competitor and a competitor. He suggested that his proposed definition of the term “direct competition” be added to the opinion. Attorney Pagliarini characterized the petitioner’s employer as the “800 pound gorilla” developer in the Town and indicated that the petitioner would recuse from matters involving another business park.

In response to Commissioner Lynch, Staff Attorney Robertson pointed out that the terms direct competitor and direct competition are not in the Code of Ethics and are not defined in the advisory opinion context. She reviewed that the provisions regarding substantial conflict of interest relate to the petitioner participating in matters in which it is reasonably foreseeable that he or his employer will be financially impacted, and that Regulation 5002 requires his recusal when his employer or his employer’s interests appear before the Planning Commission. She informed that term “direct competitor” arose in the advisory opinion context as an example of matters relating to the interests of a petitioner’s employer. Staff Attorney Robertson noted that in past advisory opinions the Commission found that the record presented was insufficient to determine who would be a direct competitor and advised the petitioner to seek further advice based upon specific facts. She indicated that the proposed definition relates more to zoning notice requirements than the interests of the petitioner’s employer. She pointed out that the petitioner’s employer is the largest residential and commercial developer in the Town and that a limited definition

may not anticipate all the possibilities in which the employer's interests appear.

Commissioner Weavill commented that under the draft advisory opinion, the petitioner's service potentially would become moot, whereas the petitioner's proposal potentially lets him participate in everything before the Planning Commission. Attorney Pagliarini disagreed. In response to Commissioner Binder, Attorney Pagliarini informed that the petitioner would recuse from a 600 pound gorilla's proposals to put a Lowes and Kmart in Town. Commissioner Binder commented that the proposed definition would not require such a recusal. Attorney Pagliarini stated that other language in the opinion would require recusal. Commissioner Binder pointed out that this is unclear. Attorney Pagliarini stated that the opinion requires the petitioner to recuse from matters that impact the interests of his employer. Commissioner Binder replied that a condominium development, not a business park, could impact the petitioner's interests and that his definition does not cover such situations. She suggested that the Commission make such determinations on a case-by-case basis. Attorney Pagliarini informed that this is unrealistic as the petitioner gets the agenda for the Planning Commission a week before a meeting. Commissioner Binder stated that the petitioner created this situation when he took the job.

In response to Commissioner Kirby, the petitioner informed that his employer had one project before the Planning Commission during his

service. In response to Commissioner Segovis, the petitioner stated that his employer did not solicit him for the job. He asserted that he joined the Planning Commission in September of 2004 and at the first meeting he attended the Planning Commission considered the final stage of a Universal project. He informed that he cannot remember if he voted on that project. Commissioner Segovis stated that he has more concerns about this situation given the petitioner's comments. He pointed out that the substantial conflict language was put in for a purpose and that he is concerned that the proposed language would weaken this requirement and lead to a slippery slope. Staff Attorney Robertson noted that Regulation 5002 is stricter than the conflict of interest provision and requires the petitioner to recuse from matters in which his employer's interests appear.

Chair Lynch commented that the Commission Staff's recommendation provides the petitioner with all the latitude he needs and noted that the petitioner put himself in this position. Commissioner Weavill suggested that the opinion state that the petitioner should not be allowed to appear before the Zoning Board, which is the Board of Appeals for the Planning Commission. Commissioner Kirby stated that if the Commission determines that the petitioner is precluded from handling Planning Commission matters involving his employer that this prohibition should carry over to when these matters are on appeal to the Zoning Board. Commissioner Binder suggested amending the last sentence of the draft opinion. Staff Attorney Robertson read the proposed

**amendment to the last sentence, stating as follows: “[t]he Commission also opines that the Code of Ethics does not prohibit the petitioner from appearing before the Coventry Zoning Board of Appeals and/or the Coventry Town Council except on matters that were previously before the Planning Commission that required his recusal.”**

**Upon the motion made by Commissioner Weavill, duly seconded by Commissioner Binder, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Scott K. Nelson, a member of the Coventry Planning Commission, as amended.**

**AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Jr., Richard**

**E. Kirby, James V. Murray, and James C. Segovis.**

**The next advisory opinion was that of Doris M. De Los Santos, an employee of DataLogics Consulting who provides services to the Rhode Island Housing Resources Commission as a contractor. The petitioner was present. Staff Attorney Leyden presented the Commission Staff recommendation. The petitioner inquired whether the same advice would apply if she chose to run for a city level position. Staff Attorney Leyden stated the same provisions apply and noted that a potential conflict is less direct on the city level.**

**Commissioner Kirby pointed out that the petitioner will have to comply with city ordinances. Commissioner Binder noted that this opinion only relates to the Code of Ethics. The petitioner pointed out that she has not yet declared her candidacy for a particular position and is considering running for either a state or city elected position. In response to Commissioner Segovis, Staff Attorney Leyden agreed that the petitioner is not subject to the Code at this time, but, given the petitioner currently provides services as a contractor to the state, she concluded that an opinion was appropriate.**

**Upon motion made by Commissioner Murray, duly seconded by Commissioner Binder, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Doris M. De Los Santos, an employee of DataLogics Consulting who provides services to the Rhode Island Housing Resources Commission as a contractor.**

**AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Jr., Richard**

**E. Kirby, James V. Murray, and James C. Segovis.**

**At approximately 9:58 a.m., upon motion made by Commissioner Binder,  
duly seconded by Commissioner Segovis, it was unanimously**

**VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5 (a)(4), to wit:**

**a.) To approve the minutes of Executive Session held on April 18, 2006.**

**b.) In re: Gene R. Noury, Complaint No. 2005-20.**

**AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Jr.,  
Richard**

**E. Kirby, James V. Murray, and James C. Segovis.**

**\* At approximately 10:00 a.m., Commissioner Kirby left the meeting.**

**At approximately 11:22 a.m., the Commission returned to Open Session.**

**The next order of business was to seal the minutes of the Executive Session held**

**on May 2, 2006. Upon motion made by Commissioner Murray, duly seconded by**

**Commissioner Binder, it was**

**VOTED: To seal the minutes of the Executive Session held on May 2, 2006.**



**AYES: James Lynch, Sr., Barbara Binder, and James V. Murray.**

**NOES: George E. Weavill, Jr., and James C. Segovis.**

**Chair Lynch reported out that in Executive Session the Commission voted:**

**a.) To approve the minutes of the Executive Session held on April 18, 2006; and**

**b.) To dismiss In re: Gene R. Noury, Complaint No. 2005-20, with prejudice because no probable cause was found under Commission Regulation 5006.**

**The next order of business was Commission Regulations. Chair Lynch reported that Subcommittee A has a proposal to present to the full Commission on May 16th. Commissioner Binder reported that Subcommittee B has draft regulatory language applying the revolving door provisions to municipal officials and school committee members and expanding the revolving door provisions to the Governor's Office and the Department of Administration. She informed that the committee is also looking at the definition of representing oneself under the revolving door provisions and applying the revolving door prohibitions to certain state department positions.**

The next order of business was the Director's Report. Executive Director Willever reported on the Staff's research into digital recording of Commission meetings. Senior Staff Attorney D'Arezzo reported that she is obtaining proposals from vendors as to what systems will meet the Commission's needs and budget. Executive Director Willever reported that he and Staff Attorney Gramitt will be in court on May 16th for a hearing in the Handrigan case. He stated that financial disclosure statements are still coming in and that he will have more information to report on it in a few weeks. He reported that there are five complaints and three advisory opinions pending.

The next order of business was New Business. Commissioner Binder suggested the Commission consider drafting language to address attempting to circumvent the Code.

At approximately 11:30 a.m., upon motion made by Commissioner Segovis, duly seconded by Commissioner Weavill, it was unanimously

**VOTED:** To adjourn the meeting.

**AYES:** James Lynch, Sr., Barbara Binder, George E. Weavill, Jr., James

V. Murray, and James C. Segovis.

**Respectfully submitted,**

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**George E. Weavill, Jr.**

**Secretary**